

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BROWN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-379E
)	
U.S. JUSTICE DEPARTMENT,)	JUDGE MCLAUGHLIN
BUREAU OF PRISONS, FCI MCKEAN)	MAGISTRATE JUDGE BAXTER
WARDEN JOHN J. LAMANNA,)	
REGIONAL DIRECTOR D. SCOTT)	Electronically Filed
DODRILL, MEDICAL DIRECTOR,)	
DIRECTOR HARLEY G. LAPPIN,)	
)	
Defendants.)	

UNITED STATES' MOTION FOR SUBSTITUTION OF PARTY

Pursuant to 42 U.S.C. § 233(a) & (g), as amended, the United States of America, by its undersigned counsel, hereby files this Motion for Substitution of Party requesting that the Court issue an Order substituting the United States as defendant and replacing defendants the U.S. Justice Department, Bureau of Prisons, FCI McKean, Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director Newton E. Kendig and Director Harley G. Lappin, and in support thereof states as follows:

1. *Pro se* prisoner Demetrius Brown filed a Complaint in the above-captioned action on December 28, 2005 under the provisions of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.* In the Complaint, plaintiff seeks \$10 million in damages for personal injuries allegedly caused by plaintiff's alleged exposure to secondhand smoke during his incarceration at a federal prison located in McKean County, Pennsylvania ("FCI McKean"). Plaintiff subsequently filed a Motion to Amend Complaint Correcting

Typographical Error and Adding Cure to Jurisdictional Deficiency, which was granted by Order dated May 9, 2005.

2. Plaintiff named as defendants the U.S. Justice Department, Bureau of Prisons, FCI McKean, Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director and Director Harley G. Lappin.¹

3. For the reasons set forth in the accompanying Brief, the United States respectfully requests that the named defendants be dismissed from this action with prejudice, and that the United States be substituted as defendant for all further proceedings in this case.

4. A Brief in Support of this Motion is being filed simultaneously herewith and the contents therein are incorporated by reference.

WHEREFORE, the United States of America respectfully requests that the Court grant its Motion for Substitution of Party and issue an Order substituting the United States as defendant, replacing defendants the U.S. Justice Department, Bureau of Prisons, FCI McKean, Warden John J. LaManna, Regional Director D. Scott Dodrill, Medical Director Newton E. Kendig, Director Harley G. Lappin, and dismissing the defendants named in the Complaint from this action with prejudice.

A proposed order is attached.

¹Although plaintiff named only an unidentified "Medical Director," the docket sheet has recently been changed to name Newton E. Kendig as that defendant.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/ Megan E. Farrell

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Counsel for the United States of America

Dated: January 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2006, a true and correct copy of the within United States' Motion for Substitution of Party and Brief in Support thereof was served via first-class mail upon the following:

Demetrius Brown
#21534-039
FCI Raybrook
P.O. Box 9001
Raybrook, NY 12977

/s/ Megan E. Farrell
MEGAN E. FARRELL
Assistant U.S. Attorney